

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARU DESAI,
Plaintiff,

v.

UMASS MEMORIAL MEDICAL
CENTER, INC., et al.,
Defendants.

CIVIL ACTION NO.:4:19-CV-10520-TSH

**SUPPLEMENTAL AFFIDAVIT OF
REID M. WAKEFIELD, ESQ., IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT BY UMASS
MEMORIAL MEDICAL CENTER,
INC., UMASS MEMORIAL
MEDICAL GROUP, INC., MAX
ROSEN, M.D., AND STEPHEN TOSI,
M.D.**

I, Reid M. Wakefield, hereby depose and state as follows:

1. I am employed as an attorney with the law firm Mirick, O'Connell, DeMallie, & Lougee, LLP, and have been retained as defense counsel, along with Robert L. Kilroy, Esq., for Defendants, UMass Memorial Medical Center, Inc., UMass Memorial Medical Group, Inc., Max Rosen, M.D., and Stephen Tosi, M.D., in the above-referenced action.

2. I have personal knowledge of the facts contained within this affidavit.

3. I attest to the following Exhibits, which are attached hereto, as containing true and accurate copies of the documents referenced therein:

4. **Exhibit EE** is a true and accurate copy of the Second Affidavit of Max Rosen, M.D., M.P.H., dated March 3, 2022.

5. **Exhibit FF** is a true and accurate copy of excerpts of the transcript of the deposition of Max Rosen, M.D., taken on May 7, 2021 and June 1, 2021.

6. **Exhibit GG** is a true and accurate copy of the Affidavit of Randa Mowlood, dated March 3, 2022.

7. **Exhibit HH** is a true and accurate copy of excerpts of the transcript of the deposition of James F. Gruden, M.D., taken on August 31, 2021.

8. **Exhibit II** is a true and accurate copy of excerpts of the transcript of the deposition of Charu Desai, M.D., taken on October 22, 2020.

9. **Exhibit JJ** is a true and accurate copy of the Affidavit of Joseph Ferrucci, M.D., dated March 2, 2022.

Signed under pains and penalties of perjury this 17th day of December, 2021.

/s/ Reid M. Wakefield
Reid M. Wakefield, Esq.

EXHIBIT EE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 4:19-cv-10520-TSH

CHARU DESAI,
Plaintiff,

v.

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CENTER, INC., et al.,
Defendants.

**SECOND AFFIDAVIT OF
MAX ROSEN, M.D., M.P.H.**

I, Max Rosen, M.D., M.P.H, hereby depose and state as follows:

1. I am the Chair of the Department of Radiology for UMass Memorial Health (the “Department”), and in this capacity I have personal knowledge of the facts set forth herein.
2. I was appointed as the Chair of the Department effective September 1, 2012.
3. Jerry Balikian, M.D., was the only radiologist in the Department since I have been Chair who met the criteria to be exempt from call under the call policy, due to his age being over 72, his academic rank of Professor, and his tenure with the Department.
4. Dr. Balikian retired from the Medical Group in 2015 at age 88.
5. Academic time is not provided to members of the Department for teaching responsibilities conducted in the course of routine clinical work, including teaching Radiology residents and/or medical students in the reading room. Every regularly-employed radiologist who holds a UMass Chan Medical School faculty appointment is required to engage in the teaching of medical students as a part of their regular job duties as a member of the faculty of the Medical School.

6. In certain cases, academic time is granted for teaching or educational activities which are substantial and outside of a faculty member's regular job duties, such as giving formal lectures or performing research or mentoring projects with Radiology residents and/or medical students.

7. Every regularly-employed radiologist performs teaching responsibilities in the reading room, but all such radiologists do not receive academic time.

8. No radiologist in the Department has received administrative or academic time for serving on the Quality Improvement Committee, with the exception of Steven Baccei, M.D., who served as the Vice Chair for Quality, Patient Safety and Process Improvement.

9. The percentage of activities allocated between clinical and educational time listed in the Faculty Annual Performance Review forms for clinical staff is a default 75% clinical and 25% educational. Virtually all regularly-employed clinical faculty have the same 75% to 25% allocation on these forms.

10. Edward H. Smith, M.D., was Chair of the Department until approximately 2002.

11. Philip Steeves, M.D., utilized a home workstation beginning in 2017 because he was a per diem employee who worked entirely remotely on an as-needed basis.

12. Carolyn Dupuis, M.D., utilized a home workstation beginning in 2017 because the Department wanted to trial the use of remote workstations for the Emergency Department and she agreed to trial the technology as an ED radiologist. Dr. Dupuis is a female.

13. It was never my practice to offer the role of Division Chief to the most senior radiologist in a division. I have always selected Division Chiefs based on who would be the best person for the job and who would best serve the needs of the Department and the particular subspecialty.

14. At the time the Chief of the Chest Division, Karin Dill, M.D., left employment in 2019, the most senior dedicated chest radiologist in the Department was Marile Barile, M.D. Dr. Barile was born in 1977.

15. The document attached as **Exhibit A** is a redacted summary of data from the quality assurance system, which was obtained and evaluated as a part of a greater review of the quality of Ronald Garrell, M.D., which ultimately led to the termination of his employment.

16. In March of 2018, Charles Cavagnaro, M.D., was the Interim Senior Vice President and Chief Medical Officer of the Medical Center, and attended the March 14, 2018, meeting with Dr. Desai and I, in that capacity.

17. During the time I was Chair, Dr. Desai never physically worked at Marlborough Hospital.

18. The Medical Group has had open requisitions posted for chest radiologists continuously since at least 2016. I have been recruiting chest radiologists constantly over the past several years.

19. In February of 2018, I requested that Dr. Dill review the reads, which comprised almost all x-rays, performed by Dr. Desai for a single day. A concern arose related to a study assigned to Dr. Desai that was read by a resident, and I wanted to evaluate the other reads that were performed that day, particularly those read with a resident. This request to Dr. Dill had nothing to do with the independent review performed on Dr. Desai's CT reads. This review played no role in and had no relationship to my decision to terminate Dr. Desai's employment.

20. In 2018 and 2019, Maria Barile, M.D., earned \$330,000 per year.

21. Brian Brochu, M.D., was paid a higher salary due to his leadership and administrative role with within the Department, which involved additional clinical skills and

responsibilities as well. Dr. Brochu served as the Chief of Radiology for Marlborough Hospital. His duties in this role included managing the Medical Group's services provided to Marlborough Hospital under its services agreement, leading the provision of community radiology services there, collaborating with Marlborough Hospital officials, and overseeing staffing coverage for the reading of studies originating from Marlborough Hospital. Dr. Brochu also performs interventional radiology, including CT and ultrasound-guided procedures, and the insertion of PICC lines.

Signed under pains and penalties of perjury this 3rd day of March 2022.



Max Rosen, M.D., M.P.H.

EXHIBIT A

Count of Accession Number	Column Labels				
Row Labels	1	2	3	4	Grand Total
S. A.	61				61
S. B.	101		7		108
J. B.	35				35
A. B.	125	1	2	4	132
D. B.	16				16
N. B.	5				5
D. B.	116	2			118
S. B.	8	1	1	1	11
B. B.	101	2	2	4	109
C. C.	122		3		125
A. C.	74	2			76
B. C.	208	6	5		219
D. C.	353	5	4	1	363
K. C.	23	1		1	25
S. D.	15				15
C. D.	150				150
Desai, Charu	55	2	2	1	60
K. D.	16				16
S. D.	72				72
C. D.	310	3	3	1	317
J. F.	165		4	3	172
R. G.	342	1	10	6	359
J. G.	203	4	3		210
B. G.	1				1
E. G.	141				141
S. H.	242	4	1		247
M. K.	25				25
A. K.	73	7	2		82
Y. K.	54	6	2	2	64
S. K.	35		1		36
M. K.	110				110
J. L.	119	1			120
R. L.	23	10			33
H. L.	310	6	5	2	323
J. L.	29			1	30
S. M.	139				139
J. M.	174	4	5	1	184
F. M.	74		3		77
A. N.	88				88
K. P.	25		1		26
N. P.	4				4
L. P.	65	3			68
K. R.	37	2	5	2	46
D. R.	9				9

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F. R.	215		2	1	218
E. S.	100	1			101
G. S.	81				81
K. S.	98				98
A. S.	37				37
H. S.	108	1	2		111
A. S.	80	1			81
P. S.	80		4		84
P. S.	147				147
D. T.	57	1			58
D. T.	23				23
G. V.	187		1		188
C. W.	192	1	7		200
J. W.	113				113
C. W.	17		1		18
S. W.	4			2	6
S. W.	2		1		3
S. W.	2				2
L. Z.	79	2	2	1	84
Grand Total	6075	80	91	34	6280
	96.74%	1.27%	1.45%	0.54%	
RG	342	1	9	4	356
	96.07%	0.28%	2.53%	1.12%	

RON - UNCORRECTED

95.26%

0.28%

2.79%

1.67%

EXHIBIT FF

In the Matter of:

Charu Desai vs

UMASS Memorial Medical Center, Inc., et al.

Max P. Rosen, M.D. Vol II

June 01, 2021

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Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Max P. Rosen, M.D.
June 01, 2021

268

1 Q. And then, in the next paragraph, you state
2 that you'd like to make him an offer but have not
3 formally resolved Dr. Desai's employment plan for
4 9/30/2018. Do you see that?

5 A. Yes.

6 Q. What specifically did you mean in writing
7 to Ms. Streeter in October of 2017 that you were
8 planning to resolve Dr. Desai's employment in
9 September of 2018?

10 A. I'm not sure what Dr. Desai wanted to do.
11 She had been requesting of me to not take call. I
12 had been -- I had offered her to go per diem if she
13 didn't want to take call.

14 Q. And your -- your phrase, planned for
15 9/30/2018, why was it planned for 9/30/2018 if
16 Dr. Desai was not sure or you were not sure what
17 Dr. Desai was going to do?

18 A. September 30th, you know, is the end of the
19 fiscal year. So all of our budgets are done on a
20 fiscal year; so just thinking one year versus --
21 versus the next.

22 Q. Had Dr. Desai mentioned to you at any point
23 that she was thinking of retiring or no longer
24 working?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Max P. Rosen, M.D.
June 01, 2021

269

1 A. She had on multiple occasions asked -- told
2 me that she didn't want to take call anymore, and I
3 had offered to her that one option for not taking
4 call was to be per diem.

5 Q. But Dr. Desai did not say to you at any
6 point, I plan to resolve my employment by
7 9/30/2018 --

8 A. No.

9 Q. -- is that correct?

10 A. Correct.

11 Q. And then you actually write, if for some
12 reason Dr. Desai is still employed after 9/30/2018,
13 you would make other staffing adjustments so that
14 the new hires addition to the department would be
15 staffing neutral, correct?

16 A. Correct.

17 Q. So this actually suggests that -- that
18 Dr. Desai had -- had no plans to end her employment
19 on September 30th, 2018?

20 A. If she -- if Dr. Desai was still working, I
21 would have juggled other FTEs to be able to bring in
22 another chest radiologist.

23 Q. That wasn't actually my question, though,
24 Dr. Rosen. My question was: This sentence suggests

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Max P. Rosen, M.D.
June 01, 2021

270

1 that Dr. Desai had no plans to resolve her
2 employment by 9/30/2018. wouldn't you agree with
3 me?

4 MR. WAKEFIELD: Object to the form.

5 You can answer, if you can.

6 A. In working on staffing and budgets, I
7 always take into account what the overall staffing
8 of the department is and the total number of FTEs,
9 and often, if there is a gap in one division, I can
10 fill that by having some people who work in multiple
11 divisions shift the work that they do.

12 So there are some people who only work in
13 one division, for example, in neuroradiology, but
14 other people who can work in more than one division,
15 and when I'm looking at the budgeting for the entire
16 department, I have to think about the total number
17 of FTEs and where people are working to best meet
18 the needs of the department.

19 Q. You know, Dr. Rosen, that still does not
20 answer the question which was about the plan that
21 you refer to here of Dr. Desai resolving her
22 employment by September 30th, 2018. why did you
23 believe that Dr. Desai planned to resolve her employ
24 by September 30th, 2018?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Max P. Rosen, M.D.
June 01, 2021

271

1 A. Because Dr. Desai had been complaining to
2 me about her work and about not wanting to take
3 call, and if somebody is no longer taking -- if
4 somebody switches from an employed position to a per
5 diem position, then they no longer are taking call,
6 but that's also a FTE position which is then
7 available.

8 Q. Right. Did you plan for her to leave by
9 then?

10 A. No.

11 Q. Why did the word, "planned," come up in
12 your email to Ms. Streeter?

13 A. It was one of the options that, if Dr.
14 Desai had stopped her full-time employment or, in
15 the second paragraph, if another radiologist wasn't
16 within the department anymore, that there would be
17 an FTE position to be able to hire somebody in
18 chest.

19 There are lots of different contingencies
20 that happen in the department.

21 Q. You --

22 A. Other contingencies are if volume increases
23 or volume decreases.

24 Q. You referred a minute ago, Dr. Rosen, to

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Max P. Rosen, M.D.
June 01, 2021

272

1 the second paragraph about -- you referred to the
2 second paragraph, and I believe you suggested,
3 perhaps, someone else leaving the department. where
4 do you see that in the second paragraph?

5 A. Actually, in the third paragraph, make
6 other adjustments so the new hire would be staffing
7 neutral.

8 Q. This doesn't say about --

9 A. In any given year -- I'm sorry.

10 Q. This doesn't actually say anything about
11 anyone else leaving, though. This says, if
12 Dr. Desai is employed, you would make adjustments so
13 that the new hires addition to the department would
14 be staffing neutral, correct?

15 A. In any given year --

16 Q. This is a yes or no question, Dr. Rosen.

17 MR. WAKEFIELD: He's trying explain the --
18 the nuances.

19 MS. WASHIENKO: Well, if he's --

20 A. In any given year, three to five people
21 come and go from the department, and part of working
22 on having an adequately staffed department is to be
23 able to have identified potential radiologists in
24 case other people leave in the course of the year.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Max P. Rosen, M.D.
June 01, 2021

273

1 It, also, takes over -- at least six months
2 to bring somebody on board; so there's a lot of
3 planning and thought that goes into staffing,
4 whether or not any of those contingencies actually
5 ever happen.

6 Q. So, at least as of October 3, 2017, you
7 were looking to find another radiologist for the
8 chest division, correct?

9 A. Yes. We, also, had lots of per diems, as
10 we've discussed, working in chest, and we'd be much
11 better off with one fellowship-trained radiologist
12 as opposed to several per diems sharing the work.

13 Q. I would...

14 On the previous page, Dr. Rosen, at the
15 bottom of the page -- well, let me -- let me -- I
16 apologize. Going back to the page that's marked
17 04629, it should be Page 3 or 4 --

18 A. Okay.

19 Q. -- you -- you wrote, "Can I go ahead and
20 make him the offer?" Do you see that?

21 A. Yes.

22 Q. Ms. Streeter writes back to you just a few
23 minutes later at 10:20 a.m. saying, "I don't think
24 so. Because of your variance, this would need to go

EXHIBIT GG

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 4:19-cv-10520-TSH

CHARU DESAI,
Plaintiff,

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UMASS MEMORIAL MEDICAL
CENTER, INC., et al.,
Defendants.

**AFFIDAVIT OF RANDA
MOWLOOD**

I, Randa Mowlood, hereby depose and state as follows:

1. I am the Senior Academic Administrator for Department of Radiology for UMass Memorial Health (the “Department”), I have served in this role since December 15, 2014, and in this capacity I have personal knowledge of the facts set forth herein.

2. Medical Group radiologists are required to work “call” where they are scheduled to work certain weekends and holidays to ensure coverage for patients every day of the year. The Department has a policy which requires all regularly-employed staff members to provide “call,” a copy of which is attached as **Exhibit A**.

3. This policy is an employment policy and was created by the Department in order to set forth guidelines regarding radiologists taking call.

4. Paragraph 5 of the policy states:

Senior attending are exempt from call and weekend/holiday coverage but will maintain incentive bonus eligibility if they meet 2 of the following 3 criteria:

- Age 72 years.
- Academic rank of full Professor
- 20 years of continuous service to the Department.

5. To my knowledge and belief, the only physician in the Department who met these criteria was Jerry Balikian, M.D., and Dr. Balikian was exempt from taking call because he met the criteria.

6. No other regularly-employed radiologist has been exempt from taking call in the time I worked in the Department.

7. Paragraph 5 of the policy is intended to exempt physicians from call if they meet two of the three criteria listed.

8. Paragraph 5 of the policy is interpreted and applied in the Department as exempting physicians from call if they meet two of the three criteria.

9. Since I have served in my role, bonus eligibility has had no relationship to radiologists taking call or their call schedules.

10. "Senior attending" is not a term that is used for any other purpose in the Department, and physicians are not designated as "Senior attending" for the purposes of compensation, Department policies, or for any other reason.

11. On multiple occasions, Charu Desai, M.D., expressed to me that she should be exempt from performing call due to her longevity with the Department.

12. In response, I informed her that the call policy applies to every radiologist, and that pursuant policy, she does not meet the criteria to be exempt from call.

13. The Medical Group has had open requisitions posted for chest radiologists continuously since at least 2016.

Signed under pains and penalties of perjury this 3rd day of March 2022.



Randa Mowlood

EXHIBIT A

Revised October 2015

CALL AND/OR WEEKEND/HOLIDAY COVERAGE POLICY

PRINCIPLES

1. Call and/or Weekend/ Holiday Coverage is Division based.
2. The frequency of call and/or Weekend/Holiday duties will be maintained at approximately 1/5 or roughly 10 to 11 weeks or weekends per year. Minor adjustments may be necessary from time to time for Divisions temporarily under or overstaffed at the discretion of the Chair's Office.
3. WRVU's earned during call or weekend/holiday obligation will count for yearend productivity calculation.
4. Call and weekend/holiday schedule will be made by the Division Chief in concert with the Physician Staffing Coordinator. When possible call/weekend/holiday schedule will be done one year in advance at the beginning of each Fiscal Year and follow Departmental guidelines.
5. Senior attending are exempt from call and weekend/holiday coverage but will maintain incentive bonus eligibility if they meet 2 of the following 3 criteria:
 - Age 72 years.
 - Academic rank of full Professor
 - 20 years of continuous service to the Department.

WEEKEND AND HOLIDAY COVERAGE – 1/5

ABDOMINAL IMAGING DIVISION – ON SITE MEMORIAL CAMPUS
8A-5P – SATURDAY/SUNDAY/HOLIDAY

ASSIGNMENT RESPONSIBILITIES

Memorial House Doctor - Contrast Coverage, emergent US and Fluoro
Responsible for any NVIR procedures at Memorial Campus.
On Site Chest person will be back-up House Doctor.

Reading Assignments

Adult non ED Abdominal Imaging – All locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not Campus))

MSK DIVISION – ON SITE SHREWSBURY STREET
8A-5P – SATURDAY/SUNDAY/HOLIDAY

ASSIGNMENT RESPONSIBILITIES

Contrast Monitoring – Shrewsbury Street MR

Reading Assignments

Adult non ED MSK imaging all locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not location))

CHEST DIVISION – ON SITE – MEMORIAL CAMPUS
8A-5P – SATURDAY/SUNDAY/HOLIDAY

ASSIGNMENT RESPONSIBILITIES

Reading Assignments

Adult non ED CHEST imaging all locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not location))

SATURDAY COVERAGE (12/YEAR)

BREAST DIVISION – ON SITE- MEMORIAL CAMPUS
8 HOUR SHIFT- with FELLOW

ASSIGNMENT RESPONSIBILITIES: Screening

CALL 7 DAYS - FRIDAY 5 PM TO FRIDAY 8 AM INCLUDING ON-SITE SAT/SUN/HOLIDAY – 1/5

PEDIATRIC DIVISION – ON SITE – UNIVERSITY CAMPUS
8A-5P – SATURDAY/SUNDAY/HOLIDAY
BEEPER AFTER 5, 7 days (FRIDAY TO FRIDAY)

Reading Assignments (Saturday/Sunday/Holiday)
All Pediatric Imaging –all locations

Priority

- a. ED-Pedi (Read out resident)
 - b. Stats
 - d. Inpatient
 - e. Carewell Urgent Care: read all prior day's cases, be available for STAT calls
 - f. Outpatient
- (Each category Prioritized by Date and Time (not location))

NEURORADIOLOGY DIVISION – ON SITE – UNIVERSITY CAMPUS
8A-5P – SATURDAY/SUNDAY/HOLIDAY
BEEPER AFTER 5, 7 days (FRIDAY TO FRIDAY)

Reading Assignments (Saturday/Sunday/Holiday)
All Neuroradiology Imaging –all locations

Priority

Read out resident

- a. ED-Neuro
- b. Stats
- c. Inpatient
- d. Outpatient

(Each category Prioritized by Date and Time (not location))

CALL (7 DAYS) ONLY

VASCULAR DIVISION –ON CALL FOR VIR AND ABDOMINAL* PROCEDURES

CALL 7 days (FRIDAY 5P THRU FRIDAY 8A)

*All Abdominal Procedures EXCEPT Memorial Campus Saturday/ Sunday/
Holiday 8A-5)

NEURO INTERVENTIONAL DIVISION –ON CALL FOR PROCEDURES

CALL 7 days (FRIDAY 5P THRU FRIDAY 8A)

ED Division- ON SITE- University Campus 24/7

Mon-Fri Shifts

7am-4pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro and Pediatrics) Carewell urgent care cases from prior day, available for STAT calls

4pm-10pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro) Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Available for calls from Carewell until 8pm

Priority

- a. ED
- b. STATs- All non-neuro including non-ED
 - i. Inpatient
 - ii. Outpatient

Pediatric cases will be entered as Preliminary by ED resident

10pm-7am

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Priority

- a. ED
- b. STATs- All non-ED STATs including Neuro
 - i. Inpatient
 - ii. Outpatient
 - iii. Other backlog in non-STAT, non-ED cases

Pediatric cases will be entered as Preliminary by ED resident

Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only

Sat/Sun/Holiday

7am-4pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro and Pediatrics) Carewell urgent care cases from prior day, available for STAT calls

4pm-10pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Available for calls from Carewell until 8pm

Priority

- a) ED
- b) STATs- All non-ED STATs including Neuro
 - i. Inpatient
 - i. Outpatient
 - ii. Other backlog in non-STAT, non-ED cases

Pediatric cases will be entered as Preliminary by ED resident

Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only

10pm-7am

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital
Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Priority

a) ED

b) STATs- All non-ED STATs including Neuro

i. Inpatient

ii. Outpatient

iii. Other backlog in non-STAT, non-ED cases

Pediatric cases will be entered as Preliminary by ED resident

Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only

EXHIBIT HH

In the Matter of:

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James F. Gruden, M.D.
August 31, 2021

77

1 Q. Right. You don't know how many of the
2 other -- the others were -- how many other
3 radiologists were included in "other," right?

4 A. No, I don't.

5 Q. So if the UMass Memorial reviewer, as
6 we'll use the phrase, did not have this column with
7 "O" and "CD," she wouldn't have known who the
8 reviewing radiologists were either, correct?

9 MS. WASHIENKO: Objection.

10 A. Correct, but I don't know what information
11 she had when she did this review. I don't know
12 anything about how it was done.

13 Q. And without having -- if the reviewer
14 didn't know who performed which CT, the reviewer
15 couldn't have discriminated against Dr. Desai's
16 reviews, is that right?

17 A. That's correct. I -- if you don't know
18 who read what case, you can't discriminate against a
19 reader.

20 Q. Do you know Dr. Desai's race?

21 A. Do I know her what?

22 Q. Her race.

23 A. I do.

24 Q. What is your understanding?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

James F. Gruden, M.D.
August 31, 2021

185

1 the last -- or the second-to-last page, Section IV
2 entitled "Expert Opinions." We -- we talked about
3 your opinions on Dr. Desai's reads, correct?

4 A. Yes.

5 Q. And we talked about your opinions on the
6 reads by other radiologists, correct?

7 A. Correct.

8 Q. And then so you also provide in the
9 last paragraph an opinion that "based on my
10 experience as a radiologist at a major hospital and
11 the apparent methodology of the instant review
12 (i.e., that all of the cases were submitted in a
13 small window in early 2017), I have formed an
14 opinion to a reasonable degree of certainty, that
15 the method of peer review used in this case does not
16 conform to any appropriate or well-known guidelines
17 for a fair peer review process," is that right?

18 A. Yes.

19 Q. But you don't know anything about how the
20 underlying review was conducted, right?

21 A. I only know these 50 cases. There may or
22 may not have been more cases that were analyzed. I
23 don't know. I only know these 50.

24 Q. But you don't know the purpose of the

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

James F. Gruden, M.D.
August 31, 2021

186

1 review, right?

2 A. I don't.

3 Q. You don't know what led to the decision to
4 conduct the review?

5 A. I do recall a mention in discussion with
6 the attorneys that there were -- I believe there
7 were some complaints about their client.

8 I don't remember from whom or whether it
9 was from more than one person, but there were some
10 complaints lodged with the department about her
11 reads.

12 Q. All right. Do you know how many
13 complaints?

14 A. I don't know.

15 Q. Do you know what the complaints were
16 about?

17 A. Just her -- her readings.

18 Q. Okay. Any -- anymore specifics than that
19 that you're aware of?

20 A. No.

21 Q. And you don't know -- or you mentioned
22 before you were told who performed the review,
23 right?

24 A. Yes. Long after I was done.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

James F. Gruden, M.D.
August 31, 2021

187

1 Q. You don't know that person's
2 qualifications, right?

3 A. I -- I believe -- I've heard of her, so I
4 suspect she's a chest radiologist. I think -- I
5 think she's a chest radiologist. I don't know much
6 about her other than that.

7 Q. And you don't know if the reviewer knew
8 the identity of the reading radiologist for each
9 study at the time the review was conducted, right?

10 A. I don't know.

11 Q. Do you know how the images were selected
12 for the review?

13 A. No, I don't.

14 Q. And you don't know who selected those
15 images?

16 A. No.

17 Q. And you don't know which radiologist or
18 the number of radiologists who performs the reads
19 which were not done by Dr. Desai, right?

20 A. No, I don't know that information.

21 Q. You don't know why the time period was
22 selected from which these studies were chosen,
23 right?

24 A. No.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

James F. Gruden, M.D.
August 31, 2021

188

1 Q. And you mentioned with respect to the
2 apparent methodology that all the cases were
3 submitted in a small window in early 2017. Why does
4 that make a difference?

5 A. Well, first of all, it's not -- it's not
6 a sustained pattern of bad reads when you're only
7 looking at one month. I don't know what was
8 happening with this person during that month.

9 I don't know what her schedule was like,
10 if she was, you know, overworked or what -- what she
11 was expecting to double cover in other service. I
12 don't know anything about what happened in that
13 one-month period to make a conclusion about
14 someone's performance.

15 And also, as I think I've mentioned
16 before, the window, you know, may have been a period
17 of time when she was covering specific types of
18 cases that were complicated, like the hospital.

19 She had a lot of complicated cases that I
20 didn't really see reflected in others, so her
21 spectrum of clinical practice during that period of
22 2017 may have been different than it is -- was in
23 other months. That's -- you know, that's kind of
24 it.

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

James F. Gruden, M.D.
August 31, 2021

189

1 Q. Okay. And but you don't know the details
2 there. You don't know whether she had a specific
3 difference in her duties during that period. You
4 don't know whether it was normal. You don't know
5 anything about the answers to those questions that
6 you just raised, right?

7 A. No, I don't know, and I also don't know
8 if she was ever previously investigated or if she
9 was given feedback and a chance to improve her
10 performance before or if this was just a one-time --
11 the only evidence I have that led to this whole
12 thing is these 50 cases over a one-month period.

13 Q. And with respect to the time frame, the
14 other studies that were done by other radiologists
15 are from the same period, is that right?

16 A. I believe so. I think all the cases were
17 from the same period.

18 Q. And you don't know when the review was
19 performed, right? You know when the cases were
20 from, but you don't know when the review was
21 performed?

22 A. I don't know.

23 Q. You don't know how long it took to perform
24 the review?

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

James F. Gruden, M.D.
August 31, 2021

190

1 A. No, I don't.

2 Q. You mentioned that in the -- in your
3 report that it appears to be a hastily performed
4 review. What makes you think it was hastily
5 performed?

6 A. Because the cases were from a very small
7 window of time. The -- I think it's obvious from
8 what I said in my written opinions that there was
9 nothing here that would warrant a termination.

10 I don't know anything about any --
11 anything about these reports. There may be other
12 factors here involved. I'm sure there are and I
13 don't know any of those.

14 But to target a review this quickly, and I
15 wasn't given any information about any of the other
16 radiologists being subjected to the same peer review
17 and the same type of action and feedback despite the
18 fact there their reports were actually worse, this
19 looked like it was all thrown together in a fairly
20 urgent basis without attention to what really
21 qualifies as an objective peer review that's fair
22 and across the board with everybody in the group and
23 representative of, you know, many different types of
24 cases and over a -- over a longer time period. You

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

James F. Gruden, M.D.
August 31, 2021

192

1 something dramatic and acute that must have
2 happened, but I didn't see that in any of the
3 reports that I got. That doesn't mean it didn't
4 happen, but based on these 50 exams, I don't see
5 anything here that would warrant a targeted, urgent
6 review.

7 Q. And, again, other radiologists were
8 included in the review as well, right?

9 A. Yes. I don't know how many.

10 Q. And so is it fair to say that the peer
11 review process that you're referring to is something
12 different than what this review would be?

13 A. It seems to me, yes.

14 Q. Okay. You don't know what UMass
15 Memorial's peer review process is, right?

16 A. I don't. And I don't know if she's -- as
17 I said, I don't know if she's had prior peer reviews
18 that showed something or not. I -- I only have this
19 50 cases.

20 Q. Okay. So is it fair to say that you don't
21 really know what the methodology was for the review
22 done by UMass Memorial?

23 A. That's correct.

24 Q. And you mentioned "the method of peer

Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

James F. Gruden, M.D.
August 31, 2021

196

1 had that spreadsheet document that you had, right?

2 A. I don't know, and I don't know if she
3 picked the cases or who picked the cases and how
4 they -- you know, why they picked these. It's kind
5 of a random sampling from a month's period of time.

6 And I don't know if Dr. Desai read every
7 other case correctly or whether she actually made
8 some substantial errors that didn't come through in
9 this select group of cases. I can only comment on
10 these 50.

11 Q. So you don't know whether the reviewer
12 knew which ones were Desai's and which ones were
13 not, right?

14 A. I don't know.

15 Q. So not -- not knowing anything about that,
16 can you really say whether it was a fair process or
17 not based on the information you have?

18 A. I can say it's not fair in the sense of,
19 as I said, picking one narrow window of time, the
20 limited number of cases and not really controlling
21 for the complexity of the cases between the -- that
22 Dr. Desai read versus others.

23 It's very easy to say you disagree with
24 somebody's readings in complicated cases. It's

EXHIBIT II

In the Matter of:

Charu Desai vs

UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D. Vol II

October 22, 2020

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Charu Desai vs
UMASS Memorial Medical Center, Inc., et al.

Charu S. Desai, M.D.
October 22, 2020

300

1 justified. If it was not justified, that is a
2 different story.

3 Q. But you don't know -- but you don't know
4 what Dr. Dill's duties were, but you think she has
5 to work the same location and hours as you?

6 A. I don't really know because I don't work
7 with her. Right.

8 Q. Tell me the duties of the division chief in
9 full, every duty she has.

10 A. It's not -- it's not my job to have the
11 division chief duties.

12 Q. Okay. So you don't know. Let's move to
13 the next exhibit.

14 A. Yeah. I don't decide for her. Plus, she
15 had -- she had an academic day once a week, and she
16 also had an administrative day after five days, and
17 then she's also covering in Shrewsbury, so sometimes
18 she's doing the cardiac and all of that.

19 (Document marked as Exhibit 29
20 for identification)

21 BY MR. KILROY:

22 Q. I'm showing you Exhibit 29. It's a letter
23 to you dated December 7, 2016.

24 A. Wait a minute. I don't have it.

EXHIBIT JJ

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 4:19-cv-10520-TSH

CHARU DESAI,
Plaintiff,

v.

UMASS MEMORIAL MEDICAL
CENTER, INC., et al.,
Defendants.

**AFFIDAVIT OF
JOSEPH FERRUCCI, M.D.**

I, Joseph Ferrucci, M.D., hereby depose and state as follows:

1. I served as Interim Chair of the UMass Memorial Medical Group Department of Radiology (the “Department”) from 2007 until 2012.

2. As Interim Chair, I created a policy for radiologists in the Department regarding taking call. Attached as **Exhibit A** is a copy of the policy, which has been revised since I originally created it.

3. Paragraph 5 of the policy has not been revised since I originally created the policy. I wrote Paragraph 5.

4. Paragraph 5 of the policy states:

Senior attending are exempt from call and weekend/holiday coverage but will maintain incentive bonus eligibility if they meet 2 of the following 3 criteria:

- Age 72 years.
- Academic rank of full Professor
- 20 years of continuous service to the Department.

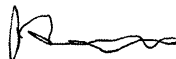
5. I wrote Paragraph 5 with the intent to exempt physicians from call if they met two of the three criteria listed, and I interpreted the policy accordingly.

6. To my knowledge, “senior attending” is not a term that is used for any other purpose in the Department, and physicians are not designated as “senior attending” for any reason that I am aware of. When I was Interim Chair, that term was not used for any other purpose.

7. While I was Interim Chair, I never had a policy or practice of offering the role of Chief of a Division to the most senior physician in the division. I made decisions regarding the selection of Division Chiefs based on who was the best person for the job, considering a variety of factors to determine who would best serve the needs of the Department and in the particular subspecialty.

8. I served as the Chair of the Department of Radiology at Boston University from 1992 to 2004, and in that role, I never had a practice of automatically offering division chief roles to the most senior physician in the division.

Signed under pains and penalties of perjury this 2 day of March 2022.



Joseph Ferrucci, M.D.

EXHIBIT A

Revised October 2015

CALL AND/OR WEEKEND/HOLIDAY COVERAGE POLICY

PRINCIPLES

1. Call and/or Weekend/ Holiday Coverage is Division based.
2. The frequency of call and/or Weekend/Holiday duties will be maintained at approximately 1/5 or roughly 10 to 11 weeks or weekends per year. Minor adjustments may be necessary from time to time for Divisions temporarily under or overstaffed at the discretion of the Chair's Office.
3. WRVU's earned during call or weekend/holiday obligation will count for yearend productivity calculation.
4. Call and weekend/holiday schedule will be made by the Division Chief in concert with the Physician Staffing Coordinator. When possible call/weekend/holiday schedule will be done one year in advance at the beginning of each Fiscal Year and follow Departmental guidelines.
5. Senior attending are exempt from call and weekend/holiday coverage but will maintain incentive bonus eligibility if they meet 2 of the following 3 criteria:
 - Age 72 years.
 - Academic rank of full Professor
 - 20 years of continuous service to the Department.

WEEKEND AND HOLIDAY COVERAGE – 1/5

ABDOMINAL IMAGING DIVISION – ON SITE MEMORIAL CAMPUS
8A-5P – SATURDAY/SUNDAY/HOLIDAY

ASSIGNMENT RESPONSIBILITIES

Memorial House Doctor - Contrast Coverage, emergent US and Fluoro
Responsible for any NVIR procedures at Memorial Campus.
On Site Chest person will be back-up House Doctor.

Reading Assignments

Adult non ED Abdominal Imaging – All locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not Campus))

MSK DIVISION – ON SITE SHREWSBURY STREET
8A-5P – SATURDAY/SUNDAY/HOLIDAY

ASSIGNMENT RESPONSIBILITIES

Contrast Monitoring – Shrewsbury Street MR

Reading Assignments

Adult non ED MSK imaging all locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not location))

CHEST DIVISION – ON SITE – MEMORIAL CAMPUS
8A-5P – SATURDAY/SUNDAY/HOLIDAY

ASSIGNMENT RESPONSIBILITIES

Reading Assignments

Adult non ED CHEST imaging all locations

Priority

- a. Stats
- b. Inpatient
- c. Outpatient

(Each category Prioritized by Date and Time (not location))

SATURDAY COVERAGE (12/YEAR)

BREAST DIVISION – ON SITE- MEMORIAL CAMPUS
8 HOUR SHIFT- with FELLOW

ASSIGNMENT RESPONSIBILITIES: Screening

CALL 7 DAYS - FRIDAY 5 PM TO FRIDAY 8 AM INCLUDING ON-SITE SAT/SUN/HOLIDAY – 1/5

PEDIATRIC DIVISION – ON SITE – UNIVERSITY CAMPUS
8A-5P – SATURDAY/SUNDAY/HOLIDAY
BEEPER AFTER 5, 7 days (FRIDAY TO FRIDAY)

Reading Assignments (Saturday/Sunday/Holiday)
All Pediatric Imaging –all locations

Priority

- a. ED-Pedi (Read out resident)
 - b. Stats
 - d. Inpatient
 - e. Carewell Urgent Care: read all prior day's cases, be available for STAT calls
 - f. Outpatient
- (Each category Prioritized by Date and Time (not location))

NEURORADIOLOGY DIVISION – ON SITE – UNIVERSITY CAMPUS
8A-5P – SATURDAY/SUNDAY/HOLIDAY
BEEPER AFTER 5, 7 days (FRIDAY TO FRIDAY)

Reading Assignments (Saturday/Sunday/Holiday)
All Neuroradiology Imaging –all locations

Priority

Read out resident

- a. ED-Neuro
- b. Stats
- c. Inpatient
- d. Outpatient

(Each category Prioritized by Date and Time (not location))

CALL (7 DAYS) ONLY

VASCULAR DIVISION –ON CALL FOR VIR AND ABDOMINAL* PROCEDURES

CALL 7 days (FRIDAY 5P THRU FRIDAY 8A)

*All Abdominal Procedures EXCEPT Memorial Campus Saturday/ Sunday/
Holiday 8A-5)

NEURO INTERVENTIONAL DIVISION –ON CALL FOR PROCEDURES

CALL 7 days (FRIDAY 5P THRU FRIDAY 8A)

ED Division- ON SITE- University Campus 24/7

Mon-Fri Shifts

7am-4pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro and Pediatrics) Carewell urgent care cases from prior day, available for STAT calls

4pm-10pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro) Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Available for calls from Carewell until 8pm

Priority

- a. ED
- b. STATs- All non-neuro including non-ED
 - i. Inpatient
 - ii. Outpatient

Pediatric cases will be entered as Preliminary by ED resident

10pm-7am

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Priority

- a. ED
- b. STATs- All non-ED STATs including Neuro
 - i. Inpatient
 - ii. Outpatient
 - iii. Other backlog in non-STAT, non-ED cases

Pediatric cases will be entered as Preliminary by ED resident

Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only

Sat/Sun/Holiday

7am-4pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital (except for Neuro and Pediatrics) Carewell urgent care cases from prior day, available for STAT calls

4pm-10pm

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Available for calls from Carewell until 8pm

Priority

- a) ED
- b) STATs- All non-ED STATs including Neuro
 - i. Inpatient
 - i. Outpatient
 - ii. Other backlog in non-STAT, non-ED cases

Pediatric cases will be entered as Preliminary by ED resident

Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only

10pm-7am

All cases ordered in the Emergency Department for the University and Memorial Campus, Marlborough Hospital and Clinton Hospital
Non-ED Inpatient/Outpatient STAT Cases to include monitoring for PE Studies via CT Chest List.

Priority

a) ED

b) STATs- All non-ED STATs including Neuro

i. Inpatient

ii. Outpatient

iii. Other backlog in non-STAT, non-ED cases

Pediatric cases will be entered as Preliminary by ED resident

Neurocases will have a final report depending on case mix and Radiologist skill set. If not will receive a "memo" only